

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

OA.NOs.961/99 & 962/99

Dated this the 19th day of June 2003.

CORAM : Hon'ble Shri V.K.Majotra, Member (A)

Hon'ble Shri Shanker Raju, Member (J)

1. Ashok Kumar G.
R/at Azad Nagar,
Wagre Pada, G.K.Gokhale Road,
Mulund (E), Mumbai.

2. Vishwanath Gauda,
R/at Room No.5, Varsha nagar,
Naupada, Kurla,
Mumbai.

By Advocate Shri M.S.Ramamurthy

vs.

1. Union of India
through the General Manager,
Central Railway, CST,
Mumbai.

2. Divisional Railway Manager
(Operating), Central Railway,
CST, Mumbai.

3. Divisional Operating Manager
(Goods), Central Railway,
CST, Mumbai.

4. Senior Station Manager,
Central Railway,
CST, Mumbai.

...Applicants

...Respondents

By Advocate Shri V.S.Masurkar

O R D E R

{Per : Shri V.K.Majotra, Member (A)}

The facts and issues involved in these OAs. being identical, they are being disposed of by this common order. Through these applications, the applicants have challenged the penalty of removal from service imposed upon them in disciplinary proceedings on the charge that they had secured appointment as Substitute Pointsman (APM) by producing fake/bogus appointment letters dated 12.2.1987.

2. While it has been contended on behalf of the applicants that respondents have not brought on record any evidence oral or documentary to prove the charge against the applicants. Respondents have contended that even if the applicants had admitted in their statement dated 26.10.1988 made by them in an other enquiry, the same can be relied upon by way of evidence even though it has not been proved or exhibited through oral evidence. In the enquiry on 25.2.1998, these applicants have stated as follows : - "Today we have inspected the original relied upon documents and also compared the same with the original document and also accepted the same as correct." While the learned counsel of the applicants had contended that this statement of the applicants is not an admission of the contents of the document, i.e. statement dated 26.10.1988 but only regarding the same being the copy of the original document.

3. We are not convinced by the contention of the learned counsel of the applicants. In our considered view, statement dated 25.2.1998 accepting the statement dated 26.10.1988 as correct is a clear unambiguous admission. The onus of proving the earlier statement does not lie with the respondents. The applicant alone has to negate such a statement which is severely damaging his case. ^{In th} An identical case, namely, OA.No.954/99 - Sudam Barik vs. Union of India & Ors. decided on 16.6.2003, removal from service on the basis of fraudulently order in turn on the basis of bogus and fake document was held to be in order and the impugned punishment of removal from service was upheld.

4. Reliance is also placed on 1998 SCC(L&S) 865 - Ministry of Finance & Anr. vs. S.B.Ramesh and Union of India & ors. vs. M. Bhaskaran - 1996 (1) S.C.SLJ 1. In the former case, it has been observed that any statement recorded behind the back of a person cannot be made use of against him in a proceeding unless the person who is said to have made that statement is made available for cross-examination to prove its veracity. In the instant case, statement dated 26.10.1988 has been made by the applicant himself. Basically the question of his examination or cross examination would not arise particularly because the statement made by him is absolutely clear and unequivocal. They had admitted their statement dated 26.10.1988 to be correct in their statement made on 25.2.1998. In the case of M.Bhaskaran (supra), it has been held that mere continuity on the post for a number of years on the basis of fraudulently obtained employment order does not create any equity in favour of the applicant or any restriction upon the employer.

5. Having regard to the discussion made above and also because these cases are fully covered by order dated 16.6.2003 in the case of OA.No.954/99 in the case of Sudam Barik, we do not find any infirmity in the impugned punishment on the applicant. These OAs. are dismissed being without merit. No costs.

(SHANKER RAJU)

MEMBER (J)

(V.K.MAJOTRA)

MEMBER (A)

mrj.